

This letter provides information regarding advance trade-ins. See 86 Ill. Adm. Code 130.455(d). (This is a GIL.)

August 23, 2004

Dear Xxxxx:

This letter is in response to your letter dated February 4, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

Please view this letter as a general information request as to the application of the Illinois Department of Revenue's ('Department') advance trade-in rules for motor vehicles which are traded-in by a leasing company under the below stated scenario.

FACTS

We represent a leasing company primarily engaged in the business of leasing motor vehicles for lease periods of one year or more ('Company'). Since the Company cannot purchase the vehicles it leases directly from the manufacturer, the vehicles are purchased by the Company through an automobile dealership that may be located either within or without the State of Illinois (the 'dealership'). With respect to these purchases, the Company is planning to make advanced trade-ins (under 86 Ill. Admin. Code 130.455) to the dealership of used vehicles it had previously purchased for lease.

These purchase and advanced trade-in transactions will be handled as follows:

1. The dealership enters into a master sales agreement with the Company which addresses both sales of motor vehicles to the Company and any advanced trade-ins. The dealership receives a fee for each vehicle sold and traded-in under the master sales agreement.

2. For vehicles purchased under the agreement, the dealership allows its dealer Sub-Code to be used to purchase vehicles from the vehicle manufacturer. Upon acceptance of the purchase order by the Dealership, the Company becomes responsible for paying the invoice due for the vehicle directly to the manufacturer. Title to the vehicles purchased will then pass to the dealership and then from the dealership to the Company.
3. The master sales agreement requires the Company to prepare much of the sales and trade-in transaction paperwork for the dealership as part of the agreement, including the appropriate title transfer and sales and use tax forms. In this regard, the dealership has provided the Company with a limited power of attorney to sign all necessary paperwork on behalf of the dealership.
4. When there is a vehicle or vehicles to be traded into the dealership, the Company will notify the dealership and, if not rejected, the Company will prepare the title paperwork, bill of sale, and advanced trade-in contract for the trade-in. The advance trade-in contract will commit the Company to purchase another vehicle within nine months of the title transfer. The contract will also provide for the trade-in credit value of the vehicle being traded in (the value is set as the value determined at auction) and a specific expiration date for the trade-in credit.
5. The vehicle is consigned to an auctioneer/wholesaler for sale pursuant to the master sales agreement and the vehicle is sent by the Company directly to this auctioneer/wholesaler for immediate sale.
6. The master sales agreement provides that the title and ownership of the vehicle is transferred to the dealership upon completion of the bill of sale and title paperwork. Title is then passed from the dealership to the ultimate purchaser upon the sale of the vehicle by the auctioneer/wholesaler. As provided in the master sales agreement, bill of sale and advanced trade-in contract, the value of advanced trade-in credit will be equal to the price received in such auction sale.¹
7. Upon the sale of the traded-in motor vehicles by the auction/wholesaler, the proceeds from that sale go to a separate bank account under the dealership's name. However, only the Company is allowed to withdraw the funds in the account. The dealership is then paid its fee on the trade-in sale by the Company.
8. For each new vehicle acquired from the dealership, the appropriate ST-556 or RUT-25 is completed on the transfer by the Company (or the dealership), and the available advanced trade-in credit taken on such tax forms. The forms are then filed with the Department with the applicable tax due.
9. The finalized paperwork is sent to the dealership for the dealership's recordkeeping requirements.
10. The new vehicle is then shipped to a courtesy dealer in Illinois for prepping and delivering to the Company.

ISSUE

Please confirm that the above transaction would qualify under the advance trade-in rules of the Department.

APPLICABLE LAW

The Illinois Use Tax imposes a tax on the privilege of using in Illinois tangible personal property purchased at retail from a retailer. 35 ILCS 105/3. The rate of tax is 6.25% of the selling price of the tangible personal property. 35 ILCS 105/3-10.

In determining the 'selling price' of an item for sale, the consideration paid on the sale excludes 'the value of or credit given for traded-in tangible personal property where the item that is traded-in is of like kind or character as that which is being sold.' 35 ILCS 105/2. In this regard, the Department has issued regulations governing the use and applicability of the trade-in provision of the Illinois Retailers' Occupation Tax and Use Tax. 86 Ill. Admin. Code § 130.455. These regulations expressly provide that 'advance trade-ins' are allowed in the purchase of a vehicle. 86 Ill. Admin. Code § 130.455(d).

In an advance trade-in situation, the regulations make it clear that an advance trade-in is allowed if the purchaser becomes contractually obligated to purchase one or more vehicles from the dealer within nine months after the date of the advanced trade-in transaction. Id. The advance trade-in provisions only require that there would be a contract that obligates the purchaser to purchase the new vehicle within the nine-month credit period. It makes no difference whether the purchaser receives cash or credit for the advance trade-in, as long as a value of the trade-in credit is determined, the obligation to purchase is expressed, and the date of expiration of the advance trade-in credit is set forth, in the contract, Id. Moreover, multiple vehicles maybe traded in and the accumulated trade-in credits accrued and used against the purchase of one or more new vehicles. 86 Ill. Admin. Code § 130.455(f).

In the Department's Letter Ruling ST 95-0293 (7/10/95), the Department sets forth its approval of the use of the advance trade-in rules for the advance trade-in of vehicles by a leasing company to a dealership in the purchase of new vehicles. In General Information Letter ST 03-0125-GIL (7/30/03), the Department again reiterated its rules for allowing advance trade-ins for vehicles. Both of these Letter Rulings are consistent with the regulations and are consonant with other rulings on trade-ins issued by the Department.

ANALYSIS & CONCLUSION

In the transaction under consideration, the dealership is receiving title to various used vehicles from the Company as trade-ins on the purchase of new vehicles from the dealership. Both the sale of the new vehicles and the acceptance of the advanced trade-ins is provided for under the master sales agreement between the dealership and the Company. The master sales agreement sets forth the rights and obligations of both parties and requires that the Company sign a contract setting forth its obligation to purchase a new vehicle within nine months of the trade-in. As required by the advanced trade-in regulations, the contract will (a) specifically require the Company to purchase a new vehicle, (b) provide for a trade-in value for the traded-in vehicles, and (c) set an expiration date for the value of the advanced trade-ins. When new vehicles are purchased from the dealership within nine months of the expiration of the advanced trade-in credits, the credits will be taken on the applicable ST-556s or RUT-25s as credits against the tax due on the purchase of the new vehicles.

The purchase and trade-in arrangement at issue herein is nearly identical to the advanced trade-in scenario approved in Private Letter Ruling ST 95-0293 (7/10/1995). In that letter ruling, a leasing company made advanced trade-ins to a dealer and delivered the vehicles directly to an auctioneer or a wholesaler for sale. By their agreement, as in this case, much of the paperwork was required to be done by the leasing company and the leasing company received cash for the trade-in. The leasing company then paid the full purchase price of the vehicle upon the purchase of the new vehicle from the dealer. In addition, like the situation at hand, the leasing company had a contract that will require it to purchase a vehicle within nine months of the advanced trade-in, will set forth the trade-in value and will set an expiration date on the credit.

Similarly, in General Information Letter ST 03-0125 (7/30/2003), the Department recently acknowledged that an advanced trade-in of an airplane likewise qualified under the advanced trade-in rules when the title to the traded-in airplane and the purchase of the new airplane ran through a special purpose LLC set up by the purchaser. As the Department noted in that letter, 'if your client is contractually obligated to purchase a new aircraft from the aircraft retailer (LLC) within nine-months of the date of the trade-in of the used aircraft and all of the requirements of §130.455(d) of the Department's Administrative Rules requiring advanced trade-ins have been met, then the sale of the used aircraft to the aircraft retailer will generally be considered an advanced trade-in.' Id.

The transaction set forth in this letter would appear to meet all of the requirements of Regulation 130.455(d). As a result, based on these regulations and the Department's letter rulings and information letters, we believe the transaction should qualify as an advanced trade-in for Illinois Use Tax purposes.

If you have any questions or contemplate issuing an information letter different from that requested above, please call. Thank you again for your time and consideration of this matter.

DEPARTMENT'S RESPONSE

As stated above, general information letters are used to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. Therefore, in the context of a general information letter, we are unable to provide you with a confirmation of whether a specific transaction qualifies as an advance trade-in. We hope the following information will be helpful.

The Retailers' Occupation Tax imposes a tax upon persons engaged in the occupation of selling tangible personal property at retail. See 86 Ill. Adm. Code 130.101 et al. A trade-in credit is available when the purchaser trades in tangible personal property of like kind and character as that which is being sold. The term "like kind and character" includes, but is not limited to, the trading of any kind of motor vehicle on the purchase of any kind of motor vehicle, or the trading of any kind of farm equipment on the purchase of any kind of farm equipment, while not including a kind of item which, if sold at retail by that retailer, would be exempt from Retailers' Occupation Tax and Use Tax as an isolated or occasional sale. See 86 Ill. Adm. Code 130.425(b).

A transaction may constitute an advance trade-in, if, at the time the vehicle is traded to the dealer, the purchaser becomes contractually obligated to purchase one or more vehicles from the dealer within 9 months after the date of the advance trade-in transaction. Advance trade credits not

used with the time specified expire and may not be used subsequent to the 9-month credit period. Advance trade credits are non-transferable. See 86 Ill. Adm. Code 130.455(d).

Pursuant to 86 Ill. Adm. Code 130.455(d)(3), documentation evidencing an advance trade-in transaction must include the following:

- 1) The contract establishing the value of or credit given for a traded-in vehicle;
- 2) The obligation to purchase a vehicle;
- 3) The date of expiration of the advance trade-in credit;
- 4) The bill of sale for the traded-in vehicle;
- 5) The appropriate sales or use tax return evidencing the purchase of the new or used vehicle; and
- 6) Recording the application of the advance trade-in credit

A purchaser may utilize a trade-in credit when trading in more than one vehicle to a dealer on the purchase of a single new or used vehicle. The dealer may use the cumulative trade-in credits from the traded-in vehicles to reduce gross receipts from the sale of the newly purchased vehicle so long as the trade-ins and the sale are recorded as a single transaction. See 86 Ill. Adm. Code 130.455(f).

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess
Associate Counsel

EEB:msk

¹ Because the parties stipulated that the price shall be determinable at auction, a fixed price for the vehicle is thus set forth in the contract for sale and bill of sale. Under the Uniform Commercial Code, a sale will be considered as consummated and enforceable even if the price term is fixed by a future market price or some future agreed to price calculation. 810 ILCS 5/2 - 305.